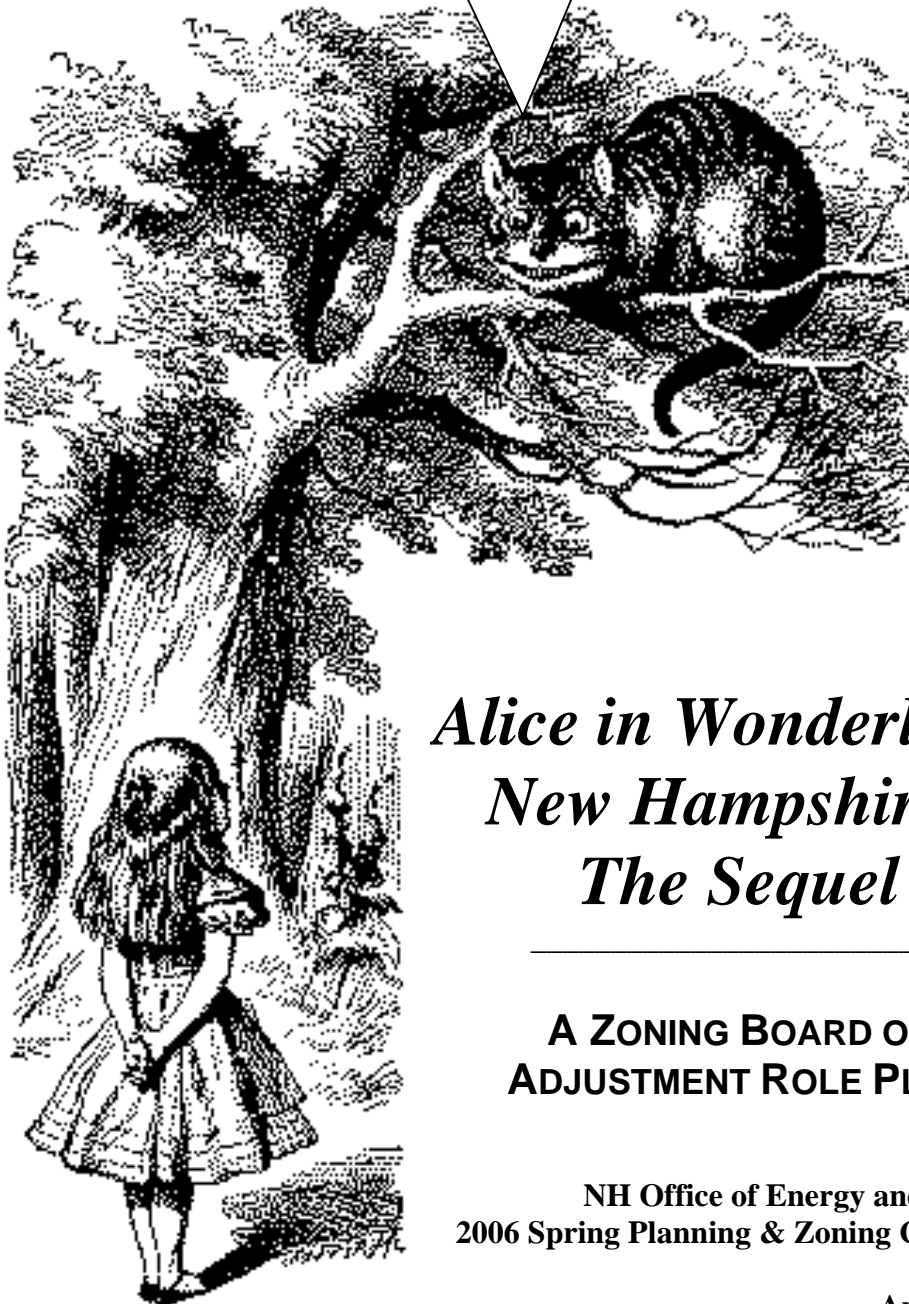


NEW HAMPSHIRE



OFFICE OF ENERGY AND PLANNING



## *Alice in Wonderland, New Hampshire - The Sequel*

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**A ZONING BOARD OF  
ADJUSTMENT ROLE PLAY**

**NH Office of Energy and Planning  
2006 Spring Planning & Zoning Conference**

**April 1, 2006**

*(With acknowledgement and appreciation to Ben  
Frost who originally authored this role play for the  
2005 spring conference.)*

# *Alice in Wonderland, New Hampshire – The Sequel*

## **ZBA ROLE PLAY**

NH OEP Spring Planning & Zoning Conference

Saturday, April 1, 2006

Schedule for this afternoon's session:

- 1:30 – 1:45** Group assignments  
Explanation of how the role play will function  
Discussion about the hardship tests from Simplex and Boccia  
Discussion of use of the hardship criteria worksheet
- 1:45 – 2:05** Role play
- 2:05 – 2:20** Questions from each group (one per group, more if we have time)
- 2:20 – 2:40** Individual group deliberations (decide to grant or deny the variance and why)
- 2:40 – 3:00** Each group reports its decision. Discussion of Vigeant v. Town of Hudson, decided February 23, 2005, and Harrington v. Town of Warner, decided April 4, 2005

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### **New Variance Criteria: *Simplex* and *Boccia***

- I. The variance will not be contrary to the public interest.
- II. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship.
  - A. Applicant seeking **use variance** - *Simplex* analysis
    - i. The zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment.
    - ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.
    - ii. The variance would not injure the public or private rights of others.
  - B. Applicant seeking **area (dimensional) variance** - *Boccia* analysis
    - i. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
    - ii. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance.
- III. The variance is consistent with the spirit of the ordinance.
- IV. Substantial justice is done.
- V. The value of surrounding properties will not be diminished.

# *Alice in Wonderland, New Hampshire – The Sequel*

## THE CAST OF CHARACTERS



### APPLICANT

#### *Alice Cooper*

Alice dropped in from another place and another time, and is world-renowned for innovative diet techniques. After having failed in a recent attempt to develop a workforce housing development, Alice has now decided to launch what is loosely described as a “life-style service center.” Alice assures us that this is all quite legal.



### ABUTTER

#### *The Mad Hatter*

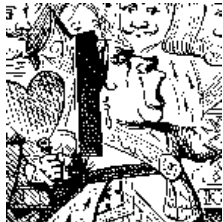
Like everyone else in Wonderland, the Mad Hatter is, well, mad. He is often seen with his sleepy sidekick, the Dormouse. But Hatter gets mad and angry when the peace of the neighborhood is disturbed. Using endless and nonsensical exhortations, Hatter complains about living on a fixed income and the rabble that will patronize Alice’s so-called life style center.



### THE BUILDING INSPECTOR

#### *The White Rabbit*

Perpetually late for inspections, the White Rabbit is regularly forced into making off-the-cuff decisions. He also constantly tries to please everyone—but when it comes to variances, the Queen of Hearts has demanded a firm hand, and Rabbit is stern and unyielding to requests by property owners to be “given a break.”



### THE UBER-CHAIRMAN

#### *The Queen of Hearts*

The Queen of Hearts is, in fact, heartless—which might explain a lot of things. She rules her ZBA with an iron hand, and deals swiftly with challenges to her brutal, if arbitrary, authority. She will guide your deliberations.

*Apologies to Lewis Carroll. None of these characters is based upon a real person, past, present, or future, insofar as we can reasonably ascertain.*

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## **BACKGROUND TO THE CASE**

**Setting:** Wonderland, New Hampshire—a lovely, small town, just like the rest of them.

Alice, after abandoning the plan for a five-unit workforce housing development last year, is now looking to develop a “life-style service center” which is essentially a radical body-transformation salon/spa/gym, promising results to clients by utilizing exercise, meditation, and various herbal cakes and potions. The center will require a building with numerous treatment rooms, some very large to make you feel small and some very small to make you feel large including a unique sensory facility which gives one the feeling of falling down a long, long rabbit hole. Also included will be an indoor garden and very large croquet course along with associated weight rooms, exercise facilities and day spa accommodations.

The parcel constitutes 1.6 acres, and is long and narrow, roughly rectangular in shape (see illustrations on the following pages). The property can only be accessed on the north side from Keyhole Lane. The zoning ordinance requires a 50-foot front yard setback from Keyhole Lane. There is also a 15-foot rear yard setback from Rabbit Hole Road, but there is a 50-foot setback from wetlands in a drainage ditch along Rabbit Hole Road.

Alice proposes to construct the project 30 feet from Keyhole Lane. This would maintain the 50-foot wetland setback, but requires a variance from the 50-foot front yard setback.

Town water and sewer are available for this site which is located in the Business (B) Zone.

In the local press, Alice has been quoted as saying that without the variances, the parcel would be “totally unusable,” and that this development would help boost tourism and provide much needed tax relief for the community.

Alice is prepared to present information to the ZBA showing that the proposed development will cause no diminution of value to surrounding properties, and that the economic necessity of a life style center requires all the components as planned.

### ***Facts for you to consider:***

- General retail sales and services are permitted in the Business District.
- There is a mix of uses in the neighborhood: on the opposite side of Keyhole Lane are single-family residential uses; the abutting parcel to the west is light manufacturing (research and development); on the opposite side of Rabbit Hole Road are light industrial uses.
- The building permit was denied as failing to meet the front setback provision.

### ***Assumptions:***

- The zoning ordinance is valid as amended
- There are no flaws in the application
- The proposed use is completely legal

# ***Town of Wonderland Zoning Ordinance***

## **Selected Excerpts**

### **ARTICLE IV, Establishment of Districts**

#### **§ 334-17. Districts enumerated; Zoning Map.**

For the purposes of this chapter, the Town of Wonderland is divided into the following districts as shown and defined on the Official Zoning Map. The Official Zoning Map is made a part of this chapter, by reference, for the purpose of designating the boundaries of districts.

#### **Full NameShort Name**

|                     |     |
|---------------------|-----|
| Residential – One   | R-1 |
| Residential – Two   | R-2 |
| Town Residence      | TR  |
| Business            | B   |
| Industrial District | I   |
| General             | G   |
| General – One       | G-1 |

#### **§ 334-18. Districts described.**

**D. Business (B).** The B District is established to provide for the development of general wholesale and retail commercial uses, services, offices uses, industry, warehousing, multifamily dwellings and customary accessory uses and structures.

### **ARTICLE V, Permitted Uses**

#### **§ 334-20. Allowed uses provided in tables.**

Any uses not specifically listed in the Table of Permitted Principal or Accessory Uses are hereby expressly prohibited. (See table on next page.)

### **ARTICLE VII, Dimensional Requirements**

**§ 334-27. Table of Minimum Dimensional Requirements.** (See table on next page.)

### **ARTICLE IX, Wetland Conservation District**

**§ 334-34. Wetland Conservation District—Definitions: WETLAND BUFFER --** A building setback extending fifty (50) feet from the edge of a wetland area, or area of poorly drained or very poorly drained soils, or from the top of the bank of a surface water body toward the adjacent upland environment.

### § 334-20. Table of Permitted Uses

| Principal Uses                     | R-1 | R-2 | B  | I | TR | G | G-1 |
|------------------------------------|-----|-----|----|---|----|---|-----|
| <b>Residential Uses</b>            |     |     |    |   |    |   |     |
| 1-family detached dwelling         | P   | P   |    |   | P  | P | P   |
| 2-family dwelling                  |     | P   |    |   |    | P | P   |
| Multifamily dwelling               |     |     | P* |   |    |   |     |
| Manufactured housing subdivision   |     |     |    |   |    | P | P   |
| Manufactured housing parks         |     |     |    |   |    | P | P   |
| Elderly housing development        |     | P   | P  |   | S  | P | P   |
| <b>Retail and Service Uses</b>     |     |     |    |   |    |   |     |
| General retail sales and services  |     |     | P  |   |    | P | P   |
| Eating and drinking establishments |     |     | P  | P |    | P | P   |
| <i>etc., etc., etc.</i>            |     |     |    |   |    |   |     |

P = permitted

S = special exception

\* = permitted only if served by town water and sewer

### § 334-27. Table of Minimum Dimensional Requirements

| USE  | Single-Family | Duplex   | Multi-Family | Business | Industrial | TR       | G-1      |
|--|---------------|----------|--------------|----------|------------|----------|----------|
| <b>A. Minimum Lot Area (square feet)</b>                         |               |          |              |          |            |          |          |
| 1. With town water and sewer (plus 5,000 square feet per unit)   | 30,000        | 43,560   | 43,560       | 30,000   | 30,000     | 10,000   | 87,120   |
| 2. Without town water or sewer                                   | 43,560        | 60,000   | NA           | 43,560   | 43,560     | 10,000   | 87,120   |
| <b>B. Building Setback Requirements (Front/Side/Rear) (feet)</b> |               |          |              |          |            |          |          |
| 1. Arterial and collector roadways                               | 50/15/15      | 50/15/15 | 50/15/15     | 50/15/15 | 50/15/15   | 30/15/15 | 50/15/15 |
| 2. Local roadways  | 30/15/15      | 30/15/15 | 50/15/15     | 50/15/15 | 50/15/15   | 30/15/15 | 30/15/15 |

# WORK SHEET: STATEMENT OF REASONS

Petition for a variance of \_\_\_\_\_

for property located at \_\_\_\_\_

After reviewing the petition and after hearing all of the evidence and by taking into consideration the personal knowledge of the property in question, the

\_\_\_\_\_ board of adjustment has determined the following:  
(community)

I. There (would - would not) be a diminution in value of surrounding properties as a result of the granting of this variance because.....

2. The granting of this variance (would - would not) be contrary to the public interest because.....

3.A **USE VARIANCE:** Because

- a. the zoning restriction as applied to the property (interferes - does not interfere) with the reasonable use of the property, considering the unique setting of the property in its environment such that .....

and

- b. there (is - is not) a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property because .....

and

- c. that the variance (would - would not) injure the public or private rights of others because .....

3.B **AREA VARIANCE:** Because

- a. the following special conditions of the property make an area variance necessary in order to allow the development as designed;

and

- b. the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because

4. By granting this variance substantial justice (would - would not) be done because.....

5. The use contemplated by petitioner as a result of obtaining this variance (would - would not) be contrary to the spirit of the ordinance because.....

**TOWN OF WONDERLAND, NEW HAMPSHIRE**  
***Zoning Board of Adjustment***  
**APPLICATION FOR APPEAL**

Do not write in this space.  
Case No. \_\_\_\_\_  
Date filed \_\_\_\_\_  
\_\_\_\_\_  
(signed - ZBA)

To: Board of Adjustment,  
Town of Wonderland  
Town Hall  
Wonderland, NH 03453

Name of applicant: **Alice Cooper**  
Address **1 Tea Party Circle**  
**Wonderland, NH 03453**  
Owner: **Same**  
(if same as applicant, write "same")  
Location of property: **69 Keyhole Lane**  
**Map 161, Lot 17**

NOTE: Fill in Section 1, 2, 3 or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

**Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION**

Relating to the interpretation and enforcement of the provisions of the zoning ordinance.  
Decision of the enforcement officer to be reviewed \_\_\_\_\_

\_\_\_\_\_ article \_\_\_\_\_ section \_\_\_\_\_ of the zoning ordinance in question: \_\_\_\_\_  
\_\_\_\_\_

**Section 2. APPLICATION FOR A SPECIAL EXCEPTION**

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article \_\_\_\_\_ section \_\_\_\_\_  
\_\_\_\_\_

**Section 3. APPLICATION FOR VARIANCE**

A variance is requested from **Section 334-27.B.2** of the zoning ordinance to permit construction of a life style service center to within 30 feet of Keyhole Lane.

Applicant *Alice Cooper*  
(Signature)

Date: March 18, 2006